

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

VICTOR VELAZQUEZ,

Plaintiff,

v.

CITY OF SANTA CLARA, et al.,

Defendants.

Case No. 5:11-cv-03588-PSG

[PROPOSED] VERDICT FORM

IT IS SO ORDERED.

Date: April 4, 2014



Paul S. Grewal

United States Magistrate Judge

I. 42 U.S.C. § 1983 – VIOLATION OF FOURTH AMENDMENT – EXCESSIVE FORCE BY INDIVIDUAL DEFENDANTS STEVE BURESS, CRAIG MIDDLEKAUFF AND NICK RICHARDS

We, the jury, unanimously answer the Questions submitted to us as follows:

1. Did any defendant use excessive force against Victor Velasquez?

a. Steve Buress: Yes _____ No _____

b. Craig Middlekauff: Yes _____ No _____

c. Nick Richards: Yes _____ No _____

If your answer to Question 1 as to any defendant is “Yes,” then answer Question 2 for that defendant but for no others. If you answered “No” to all defendants, go to Section II.

2. Was Velasquez harmed by any defendant’s excessive force?

a. Steve Buress: Yes _____ No _____

b. Craig Middlekauff: Yes _____ No _____

c. Nick Richards: Yes _____ No _____

If your answer to Question 2 as to any defendant is “Yes,” then answer Question 3 for that defendant but for no others. If you answered “No” to all defendants, go to Section II.

3. Was any defendant’s conduct a substantial factor in causing harm to Velasquez?

a. Steve Buress: Yes _____ No _____

b. Craig Middlekauff: Yes _____ No _____

c. Nick Richards: Yes _____ No _____

IF YOUR ANSWER TO QUESTION 3 AS TO ANY DEFENDANT IS “YES,” GO TO SECTION II.

OTHERWISE, GO TO SECTION V.

II. 42 USC § 1983 - PUBLIC ENTITY LIABILITY - RATIFICATION

We, the jury, unanimously answer the Questions submitted to us as follows:

1. Was Stephen Lodge a supervisor of the City of Santa Clara with final authority over the acts of any defendant whose excessive force was a substantial factor in causing harm to Velasquez?

Yes _____ No _____

If your answer to Question 1 is “Yes,” then answer Question 2. If you answered “No,” go to Section III.

2. Did Lodge know of the acts of the defendant whose excessive force was a substantial factor in causing harm to Velasquez?

Yes _____ No _____

If your answer to Question is “Yes,” then answer Question 3. If you answered “No,” go to Section III.

3. Did Lodge specifically approve of the acts of the defendant whose excessive force was a substantial factor in causing harm to Velasquez?

Yes _____ No _____

GO TO SECTION III.

III. 42 USC § 1983 - PUBLIC ENTITY LIABILITY - FAILURE TO TRAIN

We, the jury, unanimously answer the Questions submitted to us as follows:

1. Was the City of Santa Clara's training program inadequate to train its officers to properly handle usual and recurring situations?

Yes _____ No _____

If your answer to Question 1 is "Yes," then answer Question 2. If you answered "No," go to Section IV.

2. Did City of Santa Clara know, or should it have been obvious to it, that the inadequate training program was likely to result in a deprivation of Velasquez' Fourth Amendment rights?

Yes _____ No _____

If your answer to Question 2 is "Yes," then answer Question 3. If not, go to Section IV.

3. Was the failure to provide adequate training the cause of the deprivation of Velasquez' Fourth Amendment rights?

Yes _____ No _____

GO TO SECTION IV.

IV. BANE ACT

We, the jury, unanimously answer the Questions submitted to us as follows:

1. Did any officer(s) interfere with Plaintiff's constitutional rights through threats, intimidation, and coercion?

a. Steve Buress: Yes _____ No _____

b. Craig Middlekauff: Yes _____ No _____

c. Nick Richards: Yes _____ No _____

GO TO SECTION V.

V. NEGLIGENCE

We, the jury, unanimously answer the Questions submitted to us as follows:

1. Was any officer negligent?

a. Steve Buress: Yes _____ No _____

b. Craig Middlekauff: Yes _____ No _____

c. Nick Richards: Yes _____ No _____

If your answer to Question 1 as to any defendant is “Yes,” then answer Question 2 for that defendant but for no others. If you answered “No” to all defendants, go to Section VI.

2. Was the negligence of the officer(s) a substantial factor in causing harm to Velasquez?

a. Steve Buress: Yes _____ No _____

b. Craig Middlekauff: Yes _____ No _____

c. Nick Richards: Yes _____ No _____

If your answer to Question 2 as to any defendant is “Yes,” then answer Question 3. If not, go to Section VI.

3. Was Velasquez negligent?

Yes _____ No _____

If your answer to Question 3 is “Yes,” then answer Question 4. If not, go to Section VI.

4. Was Velasquez’ negligence a substantial factor in causing his harm?

Yes _____ No _____

If your answer to Question 4 is “Yes,” then answer Question 5. If not, go to Section VI.

5. What percentage of responsibility for Velasquez’ harm do you assign to Velasquez?

_____ %

GO TO SECTION VI.

VI. BATTERY BY A PEACE OFFICER

We, the jury, unanimously answer the Questions submitted to us as follows:

1. Did any officer(s) touch Velasquez with the intent to harm or offend him?

a. Steve Buress: Yes _____ No _____

b. Craig Middlekauff: Yes _____ No _____

c. Nick Richards: Yes _____ No _____

If your answer to Question 1 as to any defendant is “Yes,” then answer Question 2 for that defendant but for no others. If not, go to Section VII.

2. Did any officer(s) use unreasonable force when arresting Velasquez?

a. Steve Buress: Yes _____ No _____

b. Craig Middlekauff: Yes _____ No _____

c. Nick Richards: Yes _____ No _____

If your answer to Question 2 as to any defendant is “Yes,” then answer Question 3 for that defendant but for no others. If not, go to Section VII.

3. Was any officer(s)’ use of unreasonable force a substantial factor in causing harm to Velasquez?

a. Steve Buress: Yes _____ No _____

b. Craig Middlekauff: Yes _____ No _____

c. Nick Richards: Yes _____ No _____

GO TO SECTION VII.

VII. ASSAULT

We, the jury, unanimously answer the Questions submitted to us as follows:

1. Did any defendant act with the intent to cause a harmful or an offensive contact with Velasquez or with the intent to place him in fear of a harmful or an offensive contact?

- a. Steve Buress: Yes _____ No _____
- b. Craig Middlekauff: Yes _____ No _____
- c. Nick Richards: Yes _____ No _____

If your answer to Question 1 as to any defendant is "Yes," then answer Question 2 for that defendant but for no others. If not, go to Section VIII.

2. Did Velasquez reasonably believe that he was about to be touched in a harmful or an offensive manner?

- a. Steve Buress: Yes _____ No _____
- b. Craig Middlekauff: Yes _____ No _____
- c. Nick Richards: Yes _____ No _____

If your answer to Question 2 as to any defendant is "Yes," then answer Question 3 for that defendant but for no others. If not, go to Section VIII.

3. Did Velasquez consent to any defendant's conduct?

- a. Steve Buress: Yes _____ No _____
- b. Craig Middlekauff: Yes _____ No _____
- c. Nick Richards: Yes _____ No _____

If your answer to Question 3 as to any defendant is "Yes," then answer Question 4 for that defendant but for no others. If not, go to Section VIII.

4. Was any defendant's conduct a substantial factor in causing harm to Velasquez?

- a. Steve Buress: Yes _____ No _____
- b. Craig Middlekauff: Yes _____ No _____
- c. Nick Richards: Yes _____ No _____

If your answer to Question 4 as to any defendant is "Yes," then answer Question 5 for that defendant but for no others. If not, go to Section VIII.

1 5. Did any defendant reasonably believe that Victor Velasquez was going to harm him or
2 another person?

3 a. Steve Buress: Yes _____ No _____

4 b. Craig Middlekauff: Yes _____ No _____

5 c. Nick Richards: Yes _____ No _____

6 If your answer to Question 5 as to any defendant is “Yes,” then answer Question 6 for that
7 defendant but for no others. If not, go to Section VIII.

8 6. Did the defendant use only the amount of force that was reasonably necessary to protect
9 himself or another person?

10 d. Steve Buress: Yes _____ No _____

11 e. Craig Middlekauff: Yes _____ No _____

12 f. Nick Richards: Yes _____ No _____

13 **GO TO SECTION VIII.**

VIII. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

We, the jury, unanimously answer the Questions submitted to us as follows:

1. Was any defendant's conduct outrageous?

a. Steve Buress: Yes _____ No _____

b. Craig Middlekauff: Yes _____ No _____

c. Nick Richards: Yes _____ No _____

If your answer to Question 1 as to any defendant is "Yes," then answer Question 2 for that defendant but for no others. If not, go to Section IX.

2. Did any defendant act with reckless disregard of the possibility that Velasquez would suffer emotional distress?

a. Steve Buress: Yes _____ No _____

b. Craig Middlekauff: Yes _____ No _____

c. Nick Richards: Yes _____ No _____

If your answer to Question 2 as to any defendant is "Yes," then answer Question 3 for that defendant but for no others. If not, go to Section IX.

3. Did Velasquez suffer severe emotional distress?

a. Steve Buress: Yes _____ No _____

b. Craig Middlekauff: Yes _____ No _____

c. Nick Richards: Yes _____ No _____

If your answer to Question 3 as to any defendant is "Yes," then answer Question 4 for that defendant but for no others. If not, go to Section IX.

4. Was any defendant's conduct a substantial factor in causing Velasquez' severe emotional distress?

a. Steve Buress: Yes _____ No _____

b. Craig Middlekauff: Yes _____ No _____

c. Nick Richards: Yes _____ No _____

GO TO SECTION IX.

IX. RALPH ACT

We, the jury, unanimously answer the Questions submitted to us as follows:

1. Did any defendant threaten or commit violent acts against Velasquez?

a. Steve Buress: Yes _____ No _____

b. Craig Middlekauff: Yes _____ No _____

c. Nick Richards: Yes _____ No _____

If your answer to Question 1 as to any defendant is "Yes," then answer Question 2 for that defendant but for no others. If not, go to Section X.

2. Was any defendant's perception of Velasquez's race and/or ancestry a motivating reason for that defendant's threats or conduct?

a. Steve Buress: Yes _____ No _____

b. Craig Middlekauff: Yes _____ No _____

c. Nick Richards: Yes _____ No _____

If your answer to Question 2 as to any defendant is "Yes," then answer Question 3 for that defendant but for no others. If not, go to Section X.

3. Would a reasonable person in Velasquez's position have believed that any defendant would carry out his threats?

a. Steve Buress: Yes _____ No _____

b. Craig Middlekauff: Yes _____ No _____

c. Nick Richards: Yes _____ No _____

If your answer to Question 3 as to any defendant is "Yes," then answer Question 4 for that defendant but for no others. If not, go to Section X.

4. Would a reasonable person in Velasquez's position have been intimidated by any defendant's conduct?

a. Steve Buress: Yes _____ No _____

b. Craig Middlekauff: Yes _____ No _____

c. Nick Richards: Yes _____ No _____

If your answer to Question 4 as to any defendant is "Yes," then answer Question 5 for that defendant but for no others. If not, go to Section X.

5. Was any defendant's conduct a substantial factor in causing harm to Velasquez?

a. Steve Buress: Yes _____ No _____

b. Craig Middlekauff: Yes _____ No _____

c. Nick Richards: Yes _____ No _____

GO TO SECTION X.

X. RATIFICATION

We, the jury, unanimously answer the Questions submitted to us as follows:

1. We, the jury, have answered “Yes” to one or more of the following questions:

- a. _____ Section IV, Question 1 (Violations of the Bane Act)
- b. _____ Section V, Question 2 (Negligence)
- c. _____ Section VI, Question 3 (Battery by a Peace Officer)
- d. _____ Section VII, Question 6 (Assault)
- e. _____ Section VIII, Question 4 (Intentional Infliction of Emotional Distress)
- f. _____ Section IX, Question 5 (Violations of the Ralph Act)

If you checked any question under Question 1, then answer Question 2. If not, go to Section XI.

2. While engaging in the conduct at issue in Question 1, was Buress, Middlekauff, and/or Richards intending to act on behalf of the City of Santa Clara?

Yes _____ No _____

If your answer to Question 2 is “Yes,” then answer Question 3. If not, go to Section XI.

3. Did the City of Santa Clara learn of the conduct that subjected Buress, Middlekauff, and/or Richards to liability under any of the following theories after the conduct occurred?

Yes _____ No _____

If your answer to Question 3 is “Yes,” then answer Question 4. If not, go to Section XI.

4. Did the City of Santa Clara approve of the conduct that subjected Buress, Middlekauff, and/or Richards to liability under any of the following theories?

Yes _____ No _____

GO TO SECTION XI.

XI. DAMAGES

We, the jury, unanimously answer the Questions submitted to us as follows:

1. We, the jury, have answered “Yes” to one or more of the following questions:

- a. _____ Section I, Question 3 (§ 1983- Excessive Use of Force)
- b. _____ Section II, Question 3 (§ 1983- Public Entity Liability by Ratification)
- c. _____ Section III, Question 3 (§ 1983- Public Entity Liability by Failure to Train)
- d. _____ Section IV, Question 1 (Violations of the Bane Act)
- e. _____ Section V, Question 2 (Negligence)
- f. _____ Section VI, Question 3 (Battery by a Peace Officer)
- g. _____ Section VII, Question 6 (Assault)
- h. _____ Section VIII, Question 4 (Intentional Infliction of Emotional Distress)
- i. _____ Section IX, Question 5 (Violations of the Ralph Act)

If you checked any question under Question 1, then answer Question 2. If not, stop here, answer no further questions, and have the foreperson sign and date this form.

2. What is the total amount of damages, if any, suffered by Velasquez? Do not award duplicate damages for the same harm suffered from multiple claims.

\$ _____

3. Did Velasquez use reasonable efforts to mitigate his damages?

Yes _____ No _____

If your answer to Question 3 is “No,” then answer Question 4. If not, go to Question 5.

4. How much of Velasquez’ damages could have been mitigated by Velasquez’ reasonable efforts?

\$ _____

5. We, the jury, have answered “Yes” to one or more of the following questions with respect to the following defendants:

a. Section IV, Question 1 (Violations of the Bane Act)

i. Steve Buress: _____

ii. Craig Middlekauff: _____

iii. Nick Richards: _____

b. Section V, Question 2 (Negligence)

i. Steve Buress: _____

ii. Craig Middlekauff: _____

iii. Nick Richards: _____

c. Section VI, Question 3 (Battery by a Peace Officer)

i. Steve Buress: _____

ii. Craig Middlekauff: _____

iii. Nick Richards: _____

d. Section VII, Question 6 (Assault)

i. Steve Buress: _____

ii. Craig Middlekauff: _____

iii. Nick Richards: _____

e. Section VIII, Question 4 (Intentional Infliction of Emotional Distress)

i. Steve Buress: _____

ii. Craig Middlekauff: _____

iii. Nick Richards: _____

f. Section IX, Question 5 (Violations of the Ralph Act)

i. Steve Buress: _____

ii. Craig Middlekauff: _____

iii. Nick Richards: _____

If you checked any question for any defendant under Question 5, go to Question 6 and answer as to each of the officers whom you checked. If not, stop here, answer no further questions, and have the foreperson sign and date this form.

5. Did the officer(s) engage in malice, oppression, or fraud with respect to any of the listed claims for which you answered "Yes" above?

i. Steve Buress: _____ Yes _____ No

ii. Craig Middlekauff: _____ Yes _____ No

iii. Nick Richards: _____ Yes _____ No

If you checked "Yes" for any defendant under Question 5, then answer Question 6. If not, stop here, answer no further questions, and have the foreperson sign and date this form.

6. What amount, if any, do you award in punitive damages?

Steve Buress: \$ _____

Craig Middlekauff: \$ _____

Nick Richards: \$ _____

Have the foreperson sign and date this form.

Signed: _____ Dated: _____